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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/042,168	01/11/2002	Donald Everett Curtiss	50103-388	5959

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MCDERMOTT, WILL & EMERY  
600 13th Street, N.W.  
Washington, DC 20005-3096

EXAMINER
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HECKENBERG JR, DONALD H

ART UNIT	PAPER NUMBER
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1722

DATE MAILED: 12/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

AS

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/042,168	CURTISS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Donald Heckenberg	1722	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 September 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4,7-11,15-17 and 19-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21 and 22 is/are allowed.
- 6) ☒ Claim(s) 1-4,7-11,15-17,19,20 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 April 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- |                                                                                              |                                                                             |
|----------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

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1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

The amendment filed in repose to the last Office Action cancels claim 18. The amendment also changes claim 19 as such to depend from claim 18. Claim 19 thus depends from a cancelled claim, and is therefore indefinite.

Because both claims 18 & 19 previously depended on claim 9, claim 19 will be interpreted as depending from claim 9 for purposes of evaluating the claim on its merits below. However, appropriate correction is required.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4, 7, 9-11, 16, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Krumholz (U.S. Pat. No. 5,272,904; previously of record).

Krumholz discloses an apparatus comprising a first platen (11a) and a second platen (10), with the platens having surfaces arranged to oppose one another (figure 2). A ball joint is swivably connected with the first platen such that the ball joint can swivel to orient the first platen parallel with the second platen prior to completion of the pressing operation (see figure 3). The apparatus also comprises a pressure train configured to bring the first and second surfaces towards one another during operation (col. 6, ll. 3-10).

Claims 3-4 and 10-11 describe that the apparatus be configured for attaching a stamper or a disk. Written as such, these claims do not actually claim a stamper or a disk, but rather the apparatus be configured as to be able to attach such structures to the apparatus. The pressing apparatus disclosed by Krumholz is configured as such that a stamper or a disk could be attached to the platen (see for example, figure 2), and thus anticipates the claim limitations.

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5. Claims 1-2, 7-9, 15-17, 19-20, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Vedamuttu (U.S. Pat. No. 6,165,391; previously of record).

Venamuttu discloses a molding apparatus for the manufacture of optical disks. The apparatus comprises first and second platens (25 and 28), with the platens having surfaces arranged to oppose one another (see figure 4). The apparatus further comprises a ball joint (21 and 22) connected with the first platen at a portion opposite the first surface and centrally located with respect to the first platen (see figure 4). The apparatus is structure such that ball joint would swivel during stamping operation to orient the first and second surfaces of the platens parallel to one another prior to completion of the stamping operation. The apparatus also comprises a pressure train (30) configured to bring the first and second platens towards one another during stamping operation. Venamuttu further discloses the pressure train to be configured as such to produce stamping pressure between 5-15 Mpa during operation (col. 7, ll. 25 - 62).

6. Applicants' arguments filed September 4, 2003 have been fully considered but they are not persuasive.

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With respect to the rejection under 35 U.S.C. 102 in view of Krumholz, Applicants argue that Krumholz discloses a hydraulically operable press brake and not a data recording disk replicating stamper assembly. Applicants assert that a press brake could not be used in a data disk replicating process as required by the preamble of the claims of the instant application. Accordingly, Applicants the preamble of the claims should be construed to distinguish the Krumholz reference.

A preamble is not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See In re Hirao, 535 F.2d 67, 190 USPQ 15 (CCPA 1976); Kropa v. Robie, 187 F.2d 150, 88 USPQ 478 (CCPA 1951); MPEP § 2111.02.

In the instant case, the preamble language used in the claims of recites only an intended use of the apparatus, and body of the claims do not depend on the preambles for completeness. For example, claim 1 of the instant application recites in the preamble a "data recording disk recording disk replicating stamper assembly." Such language recites merely an intended use of the assembly (for data disk replicating stamping), and does not recite any apparatus structures. The

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body of claim 1 (lines 4-6) defines a first platen, a second platen, and means for dynamically orienting the platens. None of these structures require the preamble language for completeness. The body of claim 1 does further recite the first platen is "configured for attaching a stamper," the second platen is "configured for attaching a disk to be stamped," and that the means for dynamically orienting works "during stamping of the disk." However, such language does not positively recite a stamper or disk. Rather, the platens must simply be configured to accept such structures. Moreover, the stamper and disk are referred to as "a stamper" and "a disk," and thus in no way refer to the preamble. Thus, the preamble of claim 1 of the instant application recites only an intended use of the apparatus, and the body of the claim in no way requires any preamble language for completeness. The other rejected independent claims (2, 9, and 23) are of the same form. Therefore, the preamble of these claims cannot form a basis for distinction with the Krumholz reference.

With respect to the rejection under 35 U.S.C. 102 in view of Vedamuttu, Applicants assert that the reference does not disclose dynamic orienting of the first platen and second platen during the operating process. Specifically, Applicants assert that as surfaces 21 and 22 meet, any adjusting movement is

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severely limited by the opposing flat surfaces of each of these elements.

Vedamuttu does disclose a ball joint in the form of spherical surfaces 21 and 22. Vedamuttu defines the structures as "an upper spherical surface which cooperates with a spherical surface" col. 6, ll. 44-45 (emphasis added). Vedamuttu is clearly indicating that the two surfaces contact one another. Moreover, close examination of figure 4 (at is full scale shown in the patent) appears to disclose a gap between the flat surfaces extending outward from the spherical surfaces. Based on these disclosures of Vedamuttu, the opposing flat surfaces extending from the spherical surfaces do allow for some parallelism movement as the spherical surface contact one another.

None of the claims of the instant application require movement of the platens to a specific degree or measure. That is, along as there is for example, "means for dynamically orienting the first platen and second platen into parallel" as recited in claim 1, the claim limitation is met, regardless if the movement is very slight. The arrangement disclosed by Vedamuttu, with the ball joint formed by surfaces 21 and 22 allows for parallelism movement of the platen 25, as a force acting on the platen would cause the spherical surface 22 to



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move along the contacting surface 21. Thus, even if the allowance for such a movement in the arrangement of Vedamuttu is slight as Applicants contend, the claim limitations are still met by the mere allowance for slight parallel movement.

7. Claims 21-22 allowed. See the reasons for indicating allowable subject matter in the previous Office Action.

8. Applicants' amendment necessitated the new grounds of rejection presented in this Office Action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald Heckenberg whose telephone number is (703) 308-6371. The examiner can normally be reached on Monday through Friday from 9:30 A.M. to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker, can be reached at (703) 308-0457. The official fax phone number for the organization where this application or proceeding is assigned is (703) 972-9306. The unofficial fax phone number is (703) 305-3602.



Donald Heckenberg  
November 18, 2003



JAMES P. MACKEY  
PRIMARY EXAMINER  
11/24/03